STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MICHIGAN CONSOLIDATED GAS COMPANY FOR GAS COST RECOVERY.

MICHIGAN CONSOLIDATED GAS COMPANY,

Petitioner-Appellant/Cross-Appellee,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee/Cross-Appellee,

and

ATTORNEY GENERAL,

Appellee/Cross-Appellant,

and

MICHIGAN COMMUNITY ACTION AGENGY ASSOCIATION,

Appellee.

UNPUBLISHED
February 2, 2010

No. 282741
MPSC
LC No. 00-014401

Before: Bandstra, P.J., and Sawyer and Owens, JJ.

PER CURIAM.

In this Gas Cost Recovery (GCR) reconciliation case, appellant Michigan Consolidated Gas Company (MichCon) appeals as of right from the Public Service Commission's (PSC) December 18, 2007 disallowance of $7,614,405 of expenses incurred by MichCon for natural gas purchases during the twelve-month period ending March 31, 2006. Appellee Michigan Attorney General (AG) cross-appeals, asserting that the PSC should have disallowed a larger amount of MichCon's claimed expenses. We affirm.

I. Facts

In Case No. U-14401, MichCon presented its GCR plan, 5-Year Forecast and monthly GCR factor for a 12-month period from April 1, 2005 through March 31, 2006. According to its initial filing, MichCon planned to purchase a significant portion of its natural gas for the 2005 – 2006 winter heating season using fixed price contracts, entered into during summer months when gas prices were historically lower. MichCon planned to use a Dollar Cost Averaging (DCA) method to make these purchases. MichCon's proposed fixed price purchase guidelines defined the DCA method as "a procedure that requires the purchase of a target quantity of forward contracts for a specified future delivery period. The target quantity is divided into equal purchase increments over a prior period. The purchases are made irrespective of NYMEX futures prices in order to achieve an average futures price for the overall target quantity." According to MichCon's guidelines, it intended to purchase 50% of its planned winter purchases, or 36,778,240 decatherms (Dth) in this manner. The case plan, a modified version of which was incorporated in a later settlement agreement, also provided that the DCA purchases were to begin in the first quarter of the current GCR annual period, and that MichCon "has the discretion to determine when within the first quarter (April, May or June) to commence DCA purchases." Once the purchases began, they were to be prorated equally "over a minimum of five consecutive months during the remainder of the off-season period, defined as April through October, "so as to achieve the DCA winter target." According to witness testimony, MichCon had successfully engaged in this strategy in the prior plan year.

MichCon subsequently secured all of its 2006 gas supply using a combination of DCA and market-based pricing options. It started its DCA gas purchases on June 30, 2005. It suspended DCA purchases for the months of August and September, due to unprecedented price increases caused by hurricanes Katrina and Rita. DCA purchases resumed in October.

On June 30, 2006, MichCon filed an application for its 2005-2006 GCR reconciliation. While MichCon witnesses maintained that the costs associated with the gas purchases were reasonable, witnesses called by intervenors Residential Ratepayers Consortium (RRC), the PSC Staff (Staff), and the AG disagreed. As to the pertinent decision on appeal, that of MichCon to begin DCA purchases at the end of June, MichCon's witness George Chapel testified that MichCon waited until June of 2005 to begin gas purchases because he believed that "prices were trending downward during the spring of 2005" and that high national storage balances "indicated that there was a strong likelihood of further NYMEX price declines through the summer." In contrast, AG's expert witness Ralph Miller opined that MichCon inappropriately tried to "beat the market" in the timing and quantity of its DCA purchases, and he argued that MichCon's decision was contrary to its plan because it spread the purchases over four months and one day rather than over five months. Miller proposed a disallowance of $16,510,000.

Likewise, Staff's expert witness Lisa Kindschy faulted MichCon for its decision and recommended a $7,614,405 disallowance. To support that recommendation, Kindschy explained that the guideline definition of DCA is "a procedure that requires the purchase of a target quantity of forward contracts for a specified future delivery period" and that "[t]he target quantity is divided into equal purchase increments over a prior period." Kindschy acknowledged that MichCon's Fixed Price Purchase Guidelines gave it some discretion to delay the start of its DCA purchases. However, she maintained that the reason for MichCon's deviation was contrary to the guideline definition of DCA purchases. She contended that MichCon should have known

that the gas supply costs would rise significantly over the summer, given the trend the prior year. Had MichCon waited to start making DCA purchases in June of 2004, rather than in April, it would have resulted in a considerably higher cost of gas for that year. But MichCon ignored this information. As did Miller, Kindschy noted that DCA purchases are supposed to be made "irrespective of NYMEX futures prices in order to achieve an average future price for the overall target quantity." She maintained that MichCon's actions were in "direct conflict" with this definition of DCA, where MichCon's reasons for delaying its DCA purchases were based on NYMEX price projections. Kindschy stated that "[s]peculation about price movement is not the purpose of DCA, and is why purchases are made irrespective of NYMEX futures prices, as MichCon stated in their definition." During both direct- and cross-examination, she maintained that the "discretion" given to MichCon was designed to allow MichCon to react to "something out of the normal" in market volatility, such as an extreme weather event or a supply disruption; not normal "ups and downs."

In its proposal for decision (PFD), the ALJ found that MichCon did not exercise its DCA purchase discretion in a reasonable and prudent manner when it delayed the start of its DCA until the last day of the first quarter, June 30, 2005. Discussing the alternative calculations for arriving at an appropriate disallowance, it determined that the disallowance proposed by the AG "best reflects the consequences of MichCon's decision to delay the commencement of DCA purchases."

Following the filing of exceptions, the PSC issued its order concerning both the general GCR reconciliation proposals and the proposed disallowance of some of the DCA purchase costs. With respect to the disallowance, the PSC held that MichCon's purchase pattern was "unreasonable and imprudent." However, it adopted Staff's recommended disallowance as reasonable:

> The Commission is persuaded that Mich Con's DCA purchase pattern in the spring of 2005 was unreasonable and imprudent, and adopts the adjustment proposed by the Staff. As part of Mich Con's 2005-2006 GCR plan filing, the guidelines were in effect. While the guidelines granted Mich Con the discretion to pick the first DCA purchase date within a 90-day window, Mich Con failed to provide a reasonable explanation as to why it picked the date that it picked.
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> Gas supply decisions are evaluated by the Commission based on the known and reasonably foreseeable circumstances existing at the time that the decisions were made, and not on the results of the decisions. The admitted purpose of DCA is to reduce risk by following a strategy that locks-in a winter price in the summer months. Under the guidelines, the "DCA method" is defined as "a procedure that requires the purchase of a target quantity of forward contracts for a specified future delivery period. The target quantity is divided into equal purchase increments over a prior period. The purchases are made irrespective of NYMEX futures prices in order to achieve an average futures price for the overall target quantity." As the Staff points out, Mich Con should not have attempted a beat-the-market approach in its timing of DCA purchases, since this defeats the point of the DCA purchasing strategy. The intent of the DCA purchasing strategy was known to Mich Con throughout the 90-day period in question. Under these circumstances, the Commission finds that Mich Con's market-driven decision to

> wait until the 90th day to make the first purchase was not reasonable and prudent. The Commission finds that the Staff's recommended disallowance of $7.6 million, which is based on the difference between the two winter strip averages using an average of all trading days of the relevant months, is reasonable and fair. The Commission authorizes Mich Con to roll a total net overrecovery of $20,265,902 ($12,651,497 plus $7,614,405) into its 2006-2007 gas cost recovery reconciliation. [Citations omitted.]

MichCon now appeals by right, while the AG cross-appeals.

II. Disallowance of DCA purchase costs

MichCon argues that the PSC unlawfully disallowed a portion of the costs of MichCon's 2005 DCA gas purchases. Citing MCL 460.6h, MichCon maintains that it is entitled to recover the gas costs it has "incurred" so long as they are not precluded by the PSC's order in the previous GCR plan case. Here, where no PSC order in U-14401 "precluded" MichCon from beginning its DCA purchases on June 30, 2005, and the guidelines expressly required MichCon to use its discretion to make that decision, the PSC was prohibited from finding that MichCon's decision was imprudent or unreasonable. MichCon also maintains that Kindschy's opinion, and the PSC's decision, improperly relied on a hindsight review of MichCon's actions rather than a review in light of the existing conditions at the time the decision to purchase the gas was made. MichCon further generally challenges the Staff's testimony concerning the exercise of its discretion, and also argues that the PSC's decision improperly fails to recognize that MichCon saved its customers $11 million when it suspended its purchasing in August and September of 2005.

In *In re Application of Detroit Edison Co*, 276 Mich App 216, 224-225; 740 NW2d 685 (2007), aff'd in part and rev'd in part on other grounds, 483 Mich 993 (2009), this Court explained the applicable standard of review:

> The standard of review for PSC orders is narrow and well-defined. Pursuant to MCL 462.25, all rates, fares, charges, classification and joint rates, regulations, practices, and services prescribed by the PSC are presumed, prima facie, to be lawful and reasonable. *Michigan Consolidated Gas Co v Public Service Comm*, 389 Mich 624, 635-636; 209 NW2d 210 (1973). A party aggrieved by an order of the PSC has the burden of proving by clear and satisfactory evidence that the order is unlawful or unreasonable. MCL 462.26(8). To establish that a PSC order is unlawful, the appellant must show that the PSC failed to follow a mandatory statute or abused its discretion in the exercise of its judgment. *In re MCI Telecom Complain*t, 460 Mich 396, 427; 596 NW2d 164 (1999). And, of course, an order is unreasonable if it is not supported by the evidence. *Associated Truck Lines, Inc v Public Service Comm*, 377 Mich 259, 279; 140 NW2d 515 (1966). In sum, a final order of the PSC must be authorized by law and supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Attorney General v Public Service Comm*, 165 Mich App 230, 235; 418 NW2d 660 (1987).

Further, "[a]n agency's interpretation of a statute, while entitled to 'respectful consideration,' 'is not binding on the courts, and it cannot conflict with the Legislature's intent as expressed in the language of the statute at issue.'" *Mich Envt'l Council v Public Service Comm (In re Consumers Energy Application)*, 281 Mich App 352, 357; 761 NW2d 346 (2008), quoting *SBC Michigan v Public Service Comm (In re Complaint of Rovas Against SBC Michigan)*, 482 Mich 90, 93, 103; 754 NW2d 259 (2008).

As to this Court's review of the PSC's factual determinations:

> Judicial review of administrative agency decisions must "not invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views." *MERC v Detroit Symphony Orchestra*, 393 Mich 116, 124; 223 NW2d 283 (1974); see also *In re Payne*, 444 Mich 679, 692-693; 514 NW2d 121 (1994) ("When reviewing the decision of an administrative agency for substantial evidence, a court should accept the agency's findings of fact if they are supported by that quantum of evidence. A court will not set aside findings merely because alternative findings also could have been supported by substantial evidence on the record."). [*In re Application of Detroit Edison Co*, 483 Mich 993; 764 NW 2d 272 (2009).]

We note that the PSC had the express statutory authority to review MichCon's gas purchases, decide whether they were reasonable and prudent, and make appropriate rate adjustments. See MCL 460.6h(12), (13), & (14). In addition, while MichCon argues that no PSC order in U-14401 "precluded" MichCon from beginning its DCA purchases on June 30, 2005, an assertion apparently unchallenged by the other parties, that does not equate to a finding that the gas costs must necessarily "have been incurred through reasonable and prudent actions." MCL 460.6h(13). MichCon was not free to engage in any activity, no matter how unreasonable and imprudent, in the absence of a specific order precluding that activity.

MichCon argues that the Staff erred when it relied on the guidelines' language stating that the purpose of the DCA procedure is to make purchases "irrespective of NYMEX futures prices in order to achieve an average futures price for the overall target quantity" in application to MichCon's decision when to begin purchases. Instead, MichCon contends this language was properly applicable only to its continued purchases once MichCon had started making them. We find this argument without merit. The DCA method is designed to reduce the cost of gas by minimizing price fluctuations based on market forces. The decision when to start purchases is an integral part of the DCA procedure, because it affects how many future purchases can occur, and thus impacts the net effect of the method's use. Therefore, consideration of the purpose of the pricing method to evaluate MichCon's performance was appropriate.

MichCon further argues that, because it was given "discretion" in paragraph 9 of the proposed guidelines as to when to begin DCA purchases, it is completely insulated from its decision to wait until the last day of the 90-day period to begin. However, this provision does not clearly provide for unfettered discretion. This is somewhat akin to an argument that, since MichCon is given "discretion" to purchase gas in general, any decision it makes concerning the quantity, source, or price is not subject to review. We do not find this contention viable. Nor has MichCon shown that the wording of this provision was meant to serve as an agreement by the PSC to forego subsequent review of the prudence of MichCon's actual purchasing decisions.

Such an agreement would appear contrary to the purpose behind the reconciliation proceedings and the power and responsibility of the PSC to review purchasing decisions for reasonableness. In addition, as discussed by the expert opinions for the AG, the Staff, and the RRC, paragraph 9 did not exist in a vacuum. For example, under paragraph 10 (before the plan was amended to take the unforeseen hurricanes into consideration), MichCon was to make DCA purchases over a minimum of five consecutive months. Miller testified that MichCon deviated from this portion of the plan when it began its purchases on June 30th, because its purchases were actually only spread out over four months and one day, and the PSC agreed with this finding. As with the general purposes of the DCA program, neither the expert witnesses nor the PSC were required to ignore this portion of the plan to focus exclusively on the permissive language in paragraph 9.

MichCon also argues that, given the information it had available to it at the time it began DCA purchases, its decision was reasonable, and that all of the objections and the calculated disallowances were based impermissibly on hindsight. MichCon is correct that this Court has held that the use of the word "incurred" in MCL 60.6h(1)(b) requires the PSC to review whether gas purchasing decisions were reasonable and prudent "in light of the existing conditions at the time the decision to purchase gas was made." *Attorney General v Public Service Comm*, 161 Mich App 506, 517; 411 NW2d 469 (1987). See also *Detroit Edison Co v Public Service Comm*, 261 Mich App 448, 452; 683 NW2d 679 (2004). MichCon argues that the instant case, and the Legislature's use of "incurred" in MCL 460.6h(12)-(14) also requires that the PSC look at MichCon's decision without hindsight; and that it failed to do so here.

However, we agree with the PSC's argument on appeal that MichCon improperly attempts to include all reconciliation decisions in its definition of "hindsight." All reconciliation decisions necessarily involve some measure of hindsight but under MichCon's theory, no disallowance could ever be ordered because the act of calculating the appropriate disallowance would always involve impermissible hindsight on the part of the PSC.

Here, the PSC properly noted "gas supply decisions are evaluated by the Commission based on the known and reasonably foreseeable circumstances existing at the time that the decisions were made, and not on the results of the decisions." Reviewing the testimony below, we find that Staff expert witness Kindschy did review MichCon's purchasing decisions based on the information MichCon had, or should have had, at the time the decision to purchase was made. She specifically testified that MichCon did not act in accordance with their guidelines, and that the reason MichCon provided for delaying the start of its purchases was confusing and ran contrary to the information it had available from prior plan years:

> *Q*. Did MichCon act according to the definition of DCA as stated in their guidelines?
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> *A*. No. The reasons MichCon offers for delaying DCA are in direct conflict with their definition of DCA as described in their Fixed Price Purchase Guidelines. MichCon states that DCA purchases are made irrespective of price as specified in the above definition; therefore, the purpose of Guideline 9 must be to provide a caveat during the first quarter for an extreme weather or supply event that abnormally impacts prices, such as a hurricane or other supply disruption. Speculation about price movement is not the purpose of

DCA, and is why purchases are made irrespective of NYMEX futures prices, as MichCon stated in their definition.

Q. Mr. Chapel states on page 5 of his testimony that MichCon expected a late summer softening of prices, similar to what happened during the previous summer of 2004. Did MichCon also begin their DCA purchases in June 2004 since MichCon expected the same "late summer softening of prices" as was expected to occur in 2005?

A. No. MichCon began their DCA purchases for the 2004-05 GCR period in April 2004. The reason MichCon gave for delaying DCA until June of 2005, the expectation of a late summer softening of prices, is confusing. Mr. Chapel testified that MichCon expected the same price movement to occur in 2004 yet MichCon still chose to begin DCA purchases in April of that year. Mr. Chapel, who also participated in Case No. U-13902-R, MichCon's 2004-05 GCR Reconciliation, testified:

> Q. Please describe how the fixed price purchases pursuant to the Fixed Price Purchase Guidelines were implemented for gas delivered during the period April 2004 through March 2005.
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> A. The purchases labeled as "DCA Winter 04-05" under column 4 of Exhibit No. A-30 (GHC-13) were executed pursuant to the Dollar Cost Averaging method contained in the Fixed Price Purchase Guidelines presented in the Plan Case. Specifically, MichCon locked-in fixed prices for 50%, or 35.5 MMDth, of its November 2004 through March 2005 planned purchases under the Dollar Cost Averaging method. Approximately 5 MMDth of those fixed price purchases were executed in each of the months of April through October 2004 to achieve a total of 35.5 MMDth; sum of Column 6, rows 11 through 44, Exhibit No. A-30 (GHC-13). Those purchases were delivered in November 2004 through March 2005 at prices ranging from a minimum of $5.7775/Dth up to a maximum of $9.295/Dth, see Column 5, rows 11 through 44, Exhibit No. A-30 (GHC-13).

Q. Is there any other relevant information to consider when evaluating MichCon's decision?

A. Yes. MichCon also knew the risks associated with delaying DCA. Natural gas prices actually increased throughout the summer of 2004, and then made a significant jump due to supply cuts from Hurricane Ivan. At the end of 2004, MichCon knew that if they had waited until June 2004 to begin DCA, their cost of gas would have been considerably higher for that year. Knowing the risks from the previous year, MichCon still chose to delay DCA until June for the 2005-06 GCR period.

Q. What is Staff's position concerning MichCon's decision to delay DCA purchases until June 2005?

A. Staff disagrees with MichCon's decision to postpone DCA purchases until June 2005 even though it was within their discretion to do so. The fundamental purpose of DCA is to obtain an average price, not to speculate about the direction of the market. MichCon did not act reasonably and prudently when delaying the commencement of DCA until June 2005.

Kindschy's testimony is based on the information known to MichCon at the time of the contested purchase decisions. Her conclusion that MichCon acted imprudently was not based on hindsight. This is not changed by the fact that Staff's ultimate disallowance recommendation was based on actual market prices after MichCon made its initial purchasing decision; those prices merely served to help measure the consequences of that decision.

In sum, Kindschy testified that she disagreed with MichCon witness George Chapel's testimony that the conditions existing in the spring of 2005 justified the decision to wait until June 30th to begin DCA purchases. She explained that Chapel's testimony was inconsistent with the purpose of DCA purchasing and that Chapel should have relied on MichCon's 2004 data to begin purchases earlier. While MichCon provided conflicting testimony, this does not equate to a showing that Kindschy had no rational basis for her own conclusions. "It is for the PSC to weigh conflicting opinion testimony of the qualified ("competent") experts to determine how the evidence preponderated." *North Michigan Land & Oil Corp v Public Service Comm*, 211 Mich App 424, 439; 536 NW2d 259 (1995), quoting *Antrim Resources v Public Service Comm*, 179 Mich App 603, 620; 446 NW2d 515 (1989). Because the PSC's determination was based on the testimony of Kindschy and the other witnesses who maintained that MichCon acted imprudently by waiting to begin its DCA purchases, MichCon cannot show that the PSC's decision that MichCon acted unreasonably was not adequately based on the evidence presented below.

MichCon further argues that the PSC improperly charged MichCon with its allegedly imprudent decision as to when to begin DCA purchases, while ignoring the savings resulting from MichCon's subsequent decision to suspend gas purchases in August and September of 2005.[1] It maintains that by employing this different standard it violated MichCon's right to due

[1] We note that, as discussed below, MichCon did receive a benefit in the calculation of the disallowance with regard to the August and September suspension of purchases. We further note that MichCon does not address the testimony of Ralph Miller with respect to this argument. Looking at MichCon's actual purchases, including the suspension of August and September purchases, Miller testified that "the weighted average NYMEX winter strip applicable to the DCA purchases that MichCon actually made"—$11.28 per Dth—was "slightly higher than the average NYMEX cost MichCon would have incurred if it had stayed with its originally planned DCA purchase schedule of five equal installments" of $11.23 per Dth. He claimed that, to reach MichCon's claimed "savings" from the suspension of purchases, he had to recalculate the weighted average NYMEX cost of the actual DCA purchases to increase the gas purchased in June and July from 6.0 million Dth for each month (what MichCon actually purchased) to 7.0 million Dth (one third of the amount MichCon allegedly purchased to represent August, September and October installments and approximately what it had planned to purchase in June

(continued…)

process.[2] However, the PSC correctly notes that a utility has a duty to act reasonably and prudently whenever it purchases gas. MCL 460.6h(12). Thus, we agree with the PSC's argument that a utility's reasonable decisions during one part of the year do not somehow "cancel out" imprudent decisions made at another time.

For these reasons, we do not find that MichCon has demonstrated by clear and satisfactory evidence that the PSC's decision to disallow a portion of MichCon's gas purchase costs was unlawful or unreasonable.

III. Evidentiary basis for disallowance calculation

In its direct appeal, MichCon argues that the PSC's decision concerning the amount of the disallowance was not based on competent, material and substantial evidence. In its cross-appeal, AG raises a related argument, challenging the logic Kindschy used to arrive at her proposed disallowance and maintaining that the disallowance should have been significantly higher. Kindschy testified that the Staff calculated the proposed disallowance by first determining the amount of gas MichCon should have purchased in April and May of 2005, after dividing MichCon's total gas purchases by seven months and then multiplying the monthly figure by two. The AG agrees with this figure. However, it argues that the way the Staff calculated the price differential between how MichCon conducted its DCA purchases and how it should have conducted those purchases was unreasonably favorable to MichCon.

Kindschy testified that the Staff used an average NYMEX winter strip price, rather than picking a daily winter strip price for particular days in each month—as did the AG's witness — because "MichCon was not obligated to make DCA purchases on any particular day of the month." Kindschy also noted that using the last day of the month, or the last trading day of the month, would have resulted in a larger differential. The Staff then compared a seven-month price NYMEX average, from April to October, to the five-month average from June through October, and then multiplied this difference ($0.8006/Dth) by the amount MichCon should have purchased in May and June to arrive at the proposed disallowance.

The AG argues that the Staff's calculation was internally inconsistent and instead proposes two alternatives. It first maintains that the Staff should have taken the average price of gas for the April and May NYMEX strips, only, subtracted it from the average five-month strip price, and multiplied it by the amount of gas that should have been purchased in April and May

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(…continued)

and July). He also stated, "But that savings is still only a fraction of the additional cost that MichCon incurred by concentrating its DCA purchases towards the end of the summer, as opposed to spreading those purchases evenly throughout the entire seven-month period from April through October." Thus, there is contrary evidence as to whether MichCon's alleged costs savings really occurred.

[2] To support its argument, MichCon cites *Michigan Consolidated Gas Co v Public Service Comm*, 389 Mich 624, 633; 209 NW2d 210 (1973). However, as noted by the PSC, this case involves the grant of a temporary injunction in a general rate case, not a gas cost recovery case. In addition, MichCon quotes the circuit court's opinion in that case, not the holding of our Supreme Court.

to arrive at a proposed disallowance. The AG also maintains that the Staff could have applied the $0.8006 per Dth to MichCon's entire 33,288,056 Dth purchase rather than to only the 9,510,874 Dth April and May amounts. Both proposed approaches result in significantly larger disallowances.

Apart from the fact that neither of these alternative approaches was proposed by the AG's own expert witness, who himself proposed two alternative disallowance calculations, the AG has not shown that the Staff's calculations did not have a rational basis. Kindschy testified that Staff determined that its winter strip comparison method was the most reasonable pricing approach, because it took MichCon's decision to postpone August and September purchases into account and resulted in the lowest differential. In its exceptions to the PFD, Staff reiterated the view that "MichCon's decision to suspend DCA in August and September must not be ignored or overlooked when assigning the appropriate harm to MichCon's customers for the Company's decision to delay the commencement of DCA until June 2005." Staff argued that the AG's proposed disallowance of $16.5 million was "much too harsh a consequence for MichCon's decision to delay making DCA purchases given that the Company was not malicious in its intent, and that the Company made another decision in the same GCR period that benefited ratepayers." The PSC appeared to adopt this rationale in its order when it found the Staff's proposed disallowance "reasonable and fair." Thus, while the AG does not agree with the rationale behind the Staff's proposed calculations, we conclude that a rational basis existed for Kindschy's opinion.

For these reasons, we find that the PSC's decision was based on competent, material, and substantial evidence. We affirm.

/s/ Richard A. Bandstra
/s/ David H. Sawyer
/s/ Donald S. Owens